

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**Rodney and Melissa Mandernach, dba  
Mandernach Pork**  
Facility ID #57845  
Section 6, Douglas Township  
Sac County, Iowa

ADMINISTRATIVE ORDER  
NO. 2008-AFO-~~28~~

TO: Rodney and Melissa Mandernach  
6070 200<sup>th</sup> Avenue  
Newell, Iowa 50568

**I. SUMMARY**

This Order requires you to (1) submit a complete manure management plan (MMP) and applicable fees within 30 days of the receipt of this Order and (2) pay a penalty of \$4,000.00 within 60 days of the receipt of this Order.

Questions regarding this Order should be directed to:

**Relating to technical requirements:**

Brandon Miner, Field Office 3  
Iowa Department of Natural Resources  
1900 North Grand - Gateway North  
Spencer, Iowa 51301  
Phone: 712/262-4177

**Relating to appeal rights:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Appeal, if any, addressed to:**

Director, Iowa Dept. of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Rodney and Melissa Mandernach own and operate a confined animal feeding operation located in Section 6, Douglas Township, Sac County, Iowa. The facility consists of two confinement buildings with approximately 3,600 finishing swine. The facility was previously owned by Phillip Weitzel and was sold on contract to Mr. and Mrs. Mandernach in November 2007.

2. On February 7, 2008, DNR Field Office 3 sent Mr. Weitzel a letter reminding him the annual MMP update for his facility was due April 1, 2008. DNR Field Office 3 discovered that the Mandernachs had purchased the facility from Mr. Weitzel in November 2007.

3. On March 17, 2008, DNR Field Office 3 sent Mrs. Mandernach a certified letter stating that as a new owner, she would need to submit a complete MMP and fees by April 4, 2008. The letter went unclaimed and was later sent by regular mail. DNR Field Office 3 spoke to Mrs. Mandernach on April 9, 2008 and she stated the MMP and fees would be submitted by the end of that week. The MMP and fees were not submitted to DNR Field Office 3.

4. On April 11, 2008, DNR Field Office 3 sent Mrs. Mandernach a certified letter stating the MMP and fees were to be submitted by April 30, 2008. The letter was received by Mrs. Mandernach on April 22, 2008. DNR Field Office 3 spoke to Mrs. Mandernach on the telephone several times regarding the MMP. On May 15, 2008, DNR Field Office 3 sent a certified letter to Mrs. Mandernach informing her that the matter was being referred for further enforcement. Mrs. Mandernach received the letter on May 22, 2008. To date, the MMP and fees have not been submitted to DNR Field Office 3.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 459.312(1)"a"(1) and 567 IAC 65.16(1)"b" require that the owner of a confinement feeding operation constructed or expanded after May 31, 1985, other than a small feeding operation, shall submit a MMP to the DNR. This provision applies to new owners of facilities. Mr. and Mrs. Mandernach failed to submit an original MMP when they purchased the facility from Mr. Weitzel and continue to operate without a MMP. The above facts indicate a violation of this provision.

3. Iowa Code section 459.503 and 567 IAC 65.16(6) require all persons required to submit a MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal

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unit. The indemnity fee is due when the MMP should have been filed; Mr. and Mrs. Mandernach continue to delay the payment of the indemnity fee.

4. 567 IAC 65.16(7) requires any person submitting an original MMP to also pay to the DNR a MMP filing fee of \$250.00. The filing fee is required to be submitted with the MMP.

5. 567 IAC 65.16(3) requires that all persons required to submit a MMP also submit an updated MMP and compliance fees on an annual basis. This requirement became effective March 1, 2003. The compliance fee is fifteen cents per animal unit. Mr. and Mrs. Mandernach should have submitted an updated MMP and compliance fees for 2008.

**V. ORDER**

THEREFORE, the DNR orders Rodney and Melissa Mandernach to do the following:

1. Rodney and Melissa Mandernach shall submit a complete MMP for their animal confinement feeding operation located in Section 6, Douglas Township in Sac County within 30 days of receipt of this Order. The MMP shall be submitted to DNR Field Office 3, the board of supervisors of the county where the facility is located, and the board of supervisors of each county where manure from the facility is applied;
2. Rodney and Melissa Mandernach shall pay the filing fee of \$250.00, the indemnity fee, and the compliance fees for 2008 at the time of the filing of the MMP; and
3. Rodney and Melissa Mandernach shall pay a penalty of \$4,000.00 within 60 days of receipt of this Order.

**VI. PENALTY**

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty assessed by this administrative order is \$4,000.00. The administrative penalty is assessed to Rodney Mandernach and Melissa Mandernach, jointly and severally liable. The administrative penalty is determined as follows:

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Economic Benefit – Mr. and Mrs. Mandernach's failure to comply with the animal feeding operation regulations has allowed them to achieve an economic benefit. They have achieved an economic benefit by delaying the payment of the filing fee, indemnity fee, compliance fees, and preparation costs for the MMP. Mr. and Mrs. Mandernach have also been able to avoid the cost of MMP recordkeeping and possible operating restrictions. The Mandernachs are gaining an economic benefit over producers who have timely filed MMPs. The economic benefit received by the Mandernachs is estimated to be \$500.00.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Mr. and Mrs. Mandernach's failure to submit a MMP threatens the integrity of the animal feeding operation program. The MMP is a crucial aspect of the DNR's animal feeding operation program. The plan ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure. The Mandernachs' operation has approximately 3,600 head and if the manure is not contained or applied properly it could cause environmental harm. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability - All animal feeding operation owners and operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operation is subject to DNR's rules. The animal feeding operations area of agriculture is a rapidly growing and changing area of agriculture. Animal feeding operation owners and operators have an obligation to be aware of the regulations that apply to the operation of the facility. The Mandernachs were made aware of the requirements on several occasions and continues to operate the facility without submitting a MMP. Based on the above considerations, \$1,500.00 is assessed for this factor.

## VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175 and 567 IAC 7.5(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

## VIII. NONCOMPLIANCE

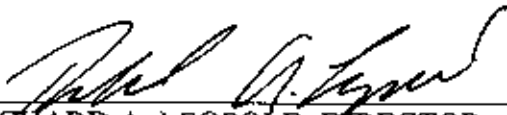
Compliance with section "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this Order. Failure to comply with this Order may result in the imposition of further

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administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Penalty Payment shall be submitted to:  
Director, Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

MMP, Filing Fee, Indemnity Fee, and Compliance Fee shall be submitted to:  
DNR Field Office 3  
1900 Grand Avenue – Gateway North Mall  
Spencer, Iowa 51301

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 5 day of  
August, 2008.

#57845; Field Office 3; Kelli Book; Gene Tinker; EPA; VII.C.1